89-313
NO.

FILED
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IN THE SUPREME COURT OF THE UNITED STATES

October Term, 1989

RICHARD WOODS,
Petitioner

v.

STATE OF ILLINOIS,
Respondent

ON PETITION FOR WRIT OF CERTIORARI TO THE
APPELLATE COURT OF THE STATE OF ILLINOIS,
FIRST DISTRICT

BRIEF FOR THE PETITIONER, RICHARD WOODS

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QUESTION PRESENTED

1. Whether the Illinois Appellate Court of Review is properly interpreting the definition of the entrapment defense first detailed in Sorrels v. United States, 287 U.S. 435 (1932)?

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Sorrels v. United States, 287 U.S. 435 (1932).

IN THE SUPREME COURT OF THE UNITED STATES

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STATE OF ILLINOIS,
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ON PETITION FOR WRIT OF CERTIORARI TO THE APPELLATE COURT OF THE STATE OF ILLINOIS, FIRST DISTRICT

BRIEF FOR THE PETITIONER, RICHARD WOODS

OPINION BELOW

The opinion of the Illinois Court of Appeals (Pet. App. A) is attached hereto. The Illinois Supreme Court denied Petitioner's request for leave to appeal.

JURISDICTION

The judgment of the Illinois Court of Appeals was entered on February 14, 1989. A petition for leave to appeal to the Illinois

Supreme Court on said decision was denied June 1, 1989. The jurisdiction of this court is invoked by the petitioner under 28 U.S.C. 2101(d) and 28 U.S.C. 1257.

STATEMENT

The petitioner, RICHARD WOODS, was convicted in the Circuit Court of Cook County, Illinois of delivery of a controlled substance. For said offense, he was sentenced to six years in prison. The basis of his defense, which was rejected by the trial court was entrapment.

The main witness against the petitioner was PHILLIP PARISO (hereinafter PARISO), a narcotics detective with the Chicago Police Department. He testified that he spoke to the petitioner on the phone at 4:30 p.m. on September 12, 1983. At that time, petitioner told PARISO that he could get him six (6) ounces of cocaine for $13,000.00.

PARISO then met the petitioner at a restaurant in Chicago. The petitioner told

PARISO that he needed $5,000.00 up front to buy the cocaine. PARISO refused. The petitioner then left and came back. They went into PARISO's car to meet the drug connection of the petitioner. This person never showed up.

Petitioner and PARISO then drove back to petitioner's house. While there, they met a friend of the petitioner's. He got into PARISO's car. While in the car, petitioner's friend showed the officer a plastic bag which contained four(4) ounces of cocaine. PARISO then pulled his car over and gave petitioner's friend $13,000.00 in marked money. After this, PARISO gave the arrest signal to his partners and both the petitioner and his friend were arrested.

After being arrested, the petitioner told PARISO he did it only for the money. He said he needed the money for rent and only got $350.00 out of this deal.

The petitioner testified in his own behalf. He stated that prior to the inci-

dent in this case, a childhood friend of the defendant, Jay Perch, contacted the petitioner. He asked the petitioner if he could help him in his business, which was selling cocaine. The petitioner told him "no". After this, Perch repeatedly went to Woods' house and place of business and asked if petitioner would help. The petitioner consistently said "no". Several months later Perch brought another person, Debbie Gardner, to petitioner's house. Gardner was a police informant. When she came to the petitioner's apartment, she told him that she knew "guys" who needed cocaine and would pay just about any price for it. Although the petitioner was about to become unemployed and was on the verge of being evicted, he refused to help.

Gardner persisted requesting petitioner for his help in selling cocaine. At this time, due to his financial situation, the petitioner began to think about it.

After this, Perch and Gardner began

to call the petitioner on a regular basis. A week later, petitioner began to call a few people in order to service their request. Perch kept on calling and asking if the petitioner had been able to obtain any cocaine. During August, 1983, Perch and Gardner introduced the petitioner to PARISO. The PARISO began to call the petitioner at home.

After repeatedly calling the petitioner on the phone, PARISO told Woods that he had a bunch of people waiting for cocaine and that he needed a supply immediately. If he did not receive these items, he would begin losing clients. The petitioner told PARISO that he would look around. PARISO called Woods fifty to sixty times between the third week of August, 1983 and his arrest on September 12, 1983. At one time during the sequence of events, Gardner threatened the petitioner for failing to supply the cocaine. Finally the petitioner obtained the cocaine and delivered it to PARISO. It was then that he was arrested. Prior to his coversations

with PARISO, the petitioner was only going to make $250.00 from this deal and was going to use the money to pay his rent. This would have been his sole source of income.

Following this testimony, and closing arguments, the trial court found Richard Woods guilty of delivery of a controlled substance. The petitioner took an appeal to the Illinois Appellate Court. This appeal was denied on February 14, 1989. Subsequently, the petitioner filed a petition for leave to appeal to the Illinois Supreme Court. This petition for leave to appeal was denied on June 1, 1989.

ARGUMENT

Petitioner relied on the entrapment defense at the time of trial. Petitioner urges this court to grant this petition for writ of certiorari, in that the Illinois Appellate Court and the Illinois Supreme Court are improperly interpreting the entrapment defense, as it was initially defined in Sorrels v. United States (1932) 287 U.S. 435.

By improperly interpreting it, the petitioner's right to due process of law under the Constitution of the United States and the State of Illinois is being abridged.

In this case, petitioner was charged with the delivery of a controlled substance. His defense was entrapment. In Sorrels, the entrapment defense was defined to exist if the following elements were present:

1. The idea of committing the offense must originate not with the suspect but rather with the enforcement authorities;

2. The enforcement authorities must actively encourage the suspect to commit the offense;

3. The purpose of the encouragement must be to obtain evidence for the prosecution of the suspect.

The rule then is that once a defendant presents some evidence in support of the contention that there was an entrapment, the prosecuting authority must prove beyond a reasonable doubt, that the defendant was not

entrapped. In the present case, the defendant's evidence was sufficient to satisfy the Sorrels standards. In making this evaluation, the critical inquiry is whether the "criminal purpose" of selling the substance originated with the accused or with the government's agents. Here, the defendant was first approached for the purpose of selling cocaine in April or May of 1983 by Jay Perch. Woods refused to sell drugs to Perch, although Perch kept badgering him over the course of several months. In late July or early August, Perch introduced Woods to a police informant, Debbie Gardner, who also pressed Woods to sell her cocaine. Again, Woods refused.

Gardner kept pressing Woods to sell her cocaine. Eventually, due to his financial situation, Woods said that he would look into it. Perch and Gardner began to call Woods on a regular basis. In late August, Perch and Gardner introduced Woods to an undercover narcotics agent Phillip

Pariso. Perch told Woods he had done a narcotics deal with PARISO in the past; that PARISO had picked him up in a limousine, and had given him extra money when the deal was done. Then, PARISO began to call Woods regularly, phoning him fifty to sixty times between late August and Woods arrest in September. At one time, Debbie Gardner threatened to have Woods arrested if he did not come up with the cocaine. Further, PARISO had reassured Woods that he had Gardner under control. The petitioner never did actually deliver cocaine to PARISO, but merely brought PARISO together with a co-defendant in the case who in fact made the delivery. Woods testified that he only got $250.00 from the deal which he needed to pay the rent. Thus, the petitioner presented more than sufficient evidence to prove that the criminal purpose of selling the cocaine originated not with him, but with the narcotic agent, Pariso and the informant, Gardner. The State was required to rebut this evidence beyond a reasonable doubt. In

rebuttal, the State's evidence totally failed to rebut each and every contention of the defendant. Thus, it is obvious that the petitioner satisfied all the elements of the Sorrels standard, and that subsequently the State failed to prove beyond a reasonable doubt that the defendant was not entrapped into delivering a controlled substance. The trial court's finding on this point was contrary to the manifest weight of the evidence. In evaluating the petitioner's stance, the Illinois Appellate Court and the Supreme Court ignored the meaning of Sorrels, and incorrectly ruled in favor of the Sate.

CONCLUSION

For the reasons stated herein , the petitioner RICHARD WOODS, prays that this Honorable Court grant his Petition for Writ of Certiorari and reverse his conviction for delivery of cocaine.

Respectfully submitted,

ROBERT J. WEBER

NO.

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the Circuit Court of Cook County.
Plaintiff-Appellee,	)	No. 83 I 10532
v.	)	Honorable Lawrence Passarella, Judge Presiding
RICHARD WOODS,	)	
Defendant-Appellant.	)	

ORDER

Defendant, Richard Woods, and co-defendant, Lawrence Heffner, were tried jointly in a bench trial. Defendant was found guilty of delivering more than 30 grams of cocaine (Ill. Rev. Stat. 1981, ch. 56½, par. 1401(a)(2)), and was sentenced to six years imprisonment. Defendant now appeals, contending that the State failed to prove beyond a reasonable doubt that he was not entrapped, that the substance he delivered was the same substance that was tested and shown to be cocaine, or that the cocaine weighed in excess of 30 grams.

APPENDIX A

At trial, Philip Pariso, a Chicago police detective who was working undercover, testified that on September 12, 1983, he called defendant to arrange a drug purchase. At that time defendant told Pariso that he had a "connection" for six ounces of cocaine at a purchase price of $13,000.00. They made arrangements to meet at a restaurant at Roosevelt Road and Central Avenue later that day. Thereafter, Pariso went to the restaurant at 6:25 p.m. and telephoned defendant. Defendant arrived at 6:30 p.m.

At the restaurant, defendant told Pariso that his connection was a man named "Humpty" and that Humpty wanted $5,000 as "front" money. When Pariso refused, defendant agreed to contact Humpty and try to get the cocaine anyway. Defendant then left the restaurant, but agreed to contact Pariso there later. At approximately 7:30 p.m. defendant returned to the restaurant, got into Pariso's car and told him to drive to 61st Avenue and 13th Street. At that location,

defendant exited Pariso's car and entered a building at 1245 South 61st Avenue in Chicago. Defendant returned to Pariso's car and informed him that Humpty was at 1241 South 61st Avenue. When defendant returned to Pariso's car this time, he told Pariso to drive to defendant's apartment building at 5823 West Fillmore. Pariso drove to this location and defendant entered his apartment building. Upon his return to Pariso's car, defendant stated that if Humpty did not appear soon he could get four ounces of cocaine from an alternative connection with whom he had just spoken. Pariso and defendant then returned to the 1241 South 61st Avenue location, but Humpty never appeared. They then returned to defendant's apartment building on West Fillmore. En route to the apartment, defendant stopped at a restaurant to make a telephone call.

Once at defendant's apartment building, defendant left Pariso's car and entered the building. When he came back out, he stated

that his connection would be arriving soon. Around 10:20 p.m. a green vehicle parked behind Pariso's car on West Fillmore and co-defendant Heffner exited the car carrying a brown paper bag.

Defendant got out of Pariso's car and entered his apartment building with codefendant. When they returned, both entered Pariso's car and Pariso was told to drive away. As Pariso drove, Heffner showed him a clear-plastic bag puportedly containing four ounces of cocaine. Defendant told Pariso that the price was $8,500. Pariso parked the car, gave defendant $13,000 in prerecorded funds and told defendant to count $8,500 while he put the cocaine in the spare tire on the back of his jeep. As Pariso placed the cocaine in the spare tire, he gave the arrest signal to the officers who had been maintaining surveillance on his car. Defendant and codefendant were arrested at that time. Because defendant gave the officers permission to search his residence, defendant and codefendant were transported back to 5823 West Fillmore.

While at defendant's residence, and after defendant was given his Miranda warnings, defendant told police that "I only did it for the money. I needed it for the rent. My end of the deal was $250."

At trial, Pariso identified a plastic bag as being the one recovered from defendant and codefendant. He stated that the plastic bag, which had contained two smaller plastic bags, had been inventoried by Officer Marino, and together they hand-delivered the package to the Chicago police crime lab.

Later in the trial a stipulation was entered "to the chain of custody as to the suspected contraband" and to the fact that Mary Panico DiTusa, a chemist, analyzed the powder from the two plastic bags and found that it contained cocaine and that it had a combined weight of 101.33 grams. Counsel for codefendant later clarified the stipulations be stating: "They are charged with 101 grams of delivery. That's the only thing before the Court. We said we would stipulate to the chain and we stipulate to the lab with regards

to the charge." Defense counsel for defendant did not object to this statement or make any comment regarding the stipulations entered.

Through the cross-examination of Pariso, counsel for defendant and counsel for codefendant Heffner attempted to provide evidence of entrapment. During cross-examination, Pariso testified that he first met defendant one or two weeks prior to September 12, 1983. Pariso stated that he had received a telephone call on an undercover telephone line from a person named Jay (Perch) Zaborak, who was later arrested for selling cocaine, and while speaking with Perch, Pariso said that he wanted to buy cocaine. Perch then told Pariso to call his cousin Rich who could supply Pariso with anything he wanted. Having received Rich's telephone number from Perch, Pariso called and talked with defendant. Pariso testified that they discussed the purchase of cocaine and agreed to meet at a certain restaurant on September 6, 1983. On September 6, 1983, defendant met

with Pariso as planned and told him that he knew a girl in Florida who could get Pariso a kilogram of cocaine. However, Pariso told defendant that he would not go to Florida with him because he did not know defendant very well.

Despite defendant's testimony to the contrary, Pariso testified that his only contact with defendant was one or two telephone calls prior to the September 6, 1983 meeting and one or two telephone calls prior to the September 12, 1983 meeting. Pariso denied that Debbie Gardner, a police informant who had given the police information about Perch, had anything to do with the present case or that Perch had given defendant's name to the police as part of a deal in relation to his arrest. Pariso did admit that defendant asked him if he was a police officer or government agent and he assured defendant that he was not.

Officers Banahan and Fleming testified that they were part of the surveillance team on the night of September 12, 1983, and that

they arrested defendant and codefendant. Banahan corroborated Pariso with regard to defendant's statement. Fleming testified regarding certain statements by codefendant.

After the above stipulations and testimony, the State rested. Defendant then testified to his alleged entrapment. According to defendant's testimony, he had been unemployed for several months prior to September 1983, and for this reason he was in great financial difficulty. In April or May 1983 defendant met a childhood friend, Jay Perch. Perch took defendant and defendant's girl friend, Patty, out to dinner and, at that time, told defendant he had made $700 by selling cocaine. Perch then asked defendant if defendant could find some sources for cocaine to help him out. Defendant refused. However, defendant claimed that after that night Perch visited or called him regularly and persisted in asking defendant to get involved in the sale of cocaine.

Defendant also testified that one night

in late August Perch brought Debbie Gardner to defendant's home. Debbie too asked defendant to help set up a deal involving the sale of cocaine. Defendant testified that Debbie told him that she knew some wealthy buyers who would pay anything for cocaine. Since defendant's live-in-girl friend Patty had just lost her job and their landlord was threatening them with eviction, defendant began to consider getting involved. Soon thereafter defendant was introduced to "Joe" (Pariso) over the telephone. However, defendant had first testified that Jay introduced him to "Joe" in the last week in August, but later testified that Debbie introduced him to "Joe" a week or two earlier. At any rate, defendant testified that following this introduction, Pariso began calling him regularly, asking defendant to find cocaine for him. In fact, defendant claimed that Pariso called him 50 or 60 times between late August and September 12. Defendant also claimed that at one point Debbie had threatened that if he did not set up a deal, she would find a way to

have him arrested. Defendant said he told this to Perch, who called Pariso, and that Pariso told defendant not to worry because he had Debbie under control. Defendant claimed that although he had used cocaine, he had never sold cocaine prior to September 12, 1983, and he would not have done so then except for the constant pressure from Perch and Debbie, along with his extreme financial need.

On cross-examination defendant admitted that he used cocaine but "not too often," and although he had purchased it four or five time for his own use, he could not remember where. Defendant also admitted meeting with Pariso on September 6, 1983, and discussing the sale of a kilogram of cocaine. Furthermore, he admitted that they discussed the sale of eight ounces of cocaine, and that he ended up delivering four ounces of cocaine to Pariso, as Pariso had testified.

Codefendant and his estranged wife also testified on codefendant's behalf.

Codefendant testified that he only became involved in the cocaine deal because defendant kept calling him and asking him to get some cocaine. Codefendant's wife testified that at the time of this transaction, codefendant was under financial pressure due to mounting bills. Following this testimony, the defense rested.

In rebuttal, the State recalled Officer Pariso, who denied phoning defendant 50 or 60 times and denied that Debbie Gardner was involved in this case. The State also offered Officer Marino in rebuttal. Officer Marino testified that he had serached defendant's apartment on September 12, 1983 after receiving defendant's permission to do so, and seized a small green scale, a small black grinder, clamps, a small bottle of isotal, crystallized powder, a large scale, a gram-weight scale, some caps and two water pipes. Officer Marino explained that these items could be used to manufacture and use cocaine. The State then rested in rebuttal.

After closing argument, the court deter-

mined that the entrapment defense "did not lie here" and found both defendant guilty of delivery of more than 30 grams of cocaine. Post-trial motions for a new trial and reconsideration were denied. Defendant was then sentenced to six years imprisonment.

Defendant first contends that the State's evidence did not overcome his affirmative defense of entrapment beyond a reasonable doubt. We disagree. In a recent case we stated that entrapment exists "when the criminal design originates with the officials of the Government, and they implant in the mind of an innocent person the disposition to commit the alleged offense and induce its commission in order that they may prosecute." People v. Schillaci (1988), 171 Ill. App. 3d 510, 517, 526 N.E. 2d 871, 875, appeal denied 530 N.E. 2d 259, quoting Sorrels v. United States (1932), 287 U.S. 435, 442, 77 L. Ed. 413, 417, 53 S. Ct. 210, 212-13.

In the present case defendant claims that he was induced to commit the crime

because of the persistent encouragement of Perch and a police informant, Debbie Gardner. However, this testimony, at best, created an inference against the State (People v. Simon (1981), 101 Ill. App. 3d 89, 95-96, 427 N.E. 2d 843, 848), and this inference was sufficiently rebutted by the testimony of Detective Pariso, even though the informant here was not called to testify (People v. Cross (1979), 77 Ill. 2d 396, 406, 396 N.E. 2d 812, 817, cert. denied sub nom Thomas v. Illinois (1980), 445 U.S. 929, 63 L. Ed. 2d 762, 100 S. Ct. 1316, Simon, 101 Ill. App. 3d at 95-96, 427 N.E. 2d at 848).

Furthermore, in the determination of whether the State proved the absence of entrapment beyond a reasonable doubt, the defendants' predisposition to commit the crime is a crucial element. (Cross, 77 Ill. 2d at 405, 396 N.E. 2d at 816; Schillaci, 171 Ill. App. 3d at 517, 526 N.E. 2d at 875.) Predisposition can be shown by evidence of the defendant's

familiarity with and ready access to drugs (People v. Tipton (1980), 78 Ill 2d 477, 488, 401 N.E. 2d 528, 533; People v. Myers (1980), 92 Ill. App. 3d 229, 235, 415 N.E. 2d 1108, 1112), and by evidence of defendant's unwillingness to withdraw when there was opportunity to do so, especially where defendant suspects that the person he is dealing with may be a government agent. Schillaci, 171 Ill. App. 3d at 519, 526 N.E. 2d at 876.

In the present case, defendant admitted using and buying cocaine for his own use. Defendant also possessed several items of drug paraphernalia in his home which supported an inference that defendant sold drugs. Furthermore, if the court believed the testimony of Detective Pariso, defendant had professed to have access to a kilogram of cocaine, was able to supply Pariso with four ounces of cocaine within six days, and continued with the delivery depite repeatedly asking Pariso whether he was a government aget. In fact, defendant by his own testimoney

admitted that he arranged a deal for Pariso and did not withdraw from the sale because he could not afford to lose his share of the profits. We, therefore, find that the defense of entrapment was disproved beyond a reasonable doubt.

Defendant's second claim of error is that the State failed to prove the chain of custody with respect to the substance delivered by defendant. Although defendant admits that a "generalized stipulation" was made at trial, he now claims that the stipulation was insufficient to satisfy the State's obligation to prove each element of the offense. He says that there was no objection to the stipulation at trial, because it was not his obligation to perfect the State's defective stipulation. We disagree for two reasons. First, in view of the fact that defendant presented the defense of entrapment and, by definition, admitted to the offense (People v. Paqliuca (1983), 119 Ill. App. 3d 906, 915, 458 N.E. 2d 908, 915), the "generalized stipulation,"

to the "chain of custody" and the chemist's report, under the circumstances, was sufficient to fulfill the State's burden. Second, counsel's failure to object to what the defendant claims was a defective stipulation, waived the error. People v. Holloman (1970), 46 Ill. 2d 311, 318-19, 263 N.E. 2d 7, 11.

Defendant's last claim of error is that the State failed to prove beyond a reasonable doubt that the weight of the cocaine that defendant delivered was in excess of 30 grams. The testimony at trial showed that the package defendant delivered actually contained two separate clear-plastic bags within a larger clear-plastic bag. At trial it was stipulated that the combined weight of the two plastic bags was 101.33 grams and that the combined powders, when tested, proved to contain cocaine. Defendant's argument on appeal is that the State failed to prove that both bags contained cocaine. Defendant argues here that one of the bags could have been merely flour, sugar or some other non-

controlled substance and that the act of combining the two packages without weighing the contents of each bag, individually, and without showing that the powder from each of the two bags tested positively for cocaine, raised a reasonable doubt that the cocaine that defendant delivered weighed in excess for 30 grams. The State apparently does not contest defendant's position that the powder from both bags was combined prior to weighing and testing.

Although we do not approve of the particular method used by the Chicago police crime lab here and find that this method could raise a reasonable doubt as to the actual weight of the substance containing cocaine (People v. Hill (1988), 169 Ill. App. 3d 901, 911, 524 N.E. 2d 604, 611, appeal denied 530 N.E. 2d 256), we nonetheless find in this case that defendant waived any error by failing to object and, furthermore, find that defendant admitted in cross-examination to delivering four ounces of

cocaine, which is in excess of 30 grams.

It is true, as defendant argues, that if there is a lesser-included offense for possessing or delivering a smaller amount available, under the facts of the case, the weight of the substances containing a drug is an essential element of the offense. (Hill, 169 Ill. App. 3d at 911, 524 N.E. 2d at 611.) However, in this case, defendant was charged with delivering a controlled substance, namely cocaine, weighing more than 30 grams. (Ill. Rev. Stat. 1981, ch. 56½, par. 1401(a) (2).) Defendant admitted his guilt to the charge by his entrapment defense (Pagliuca, 119 Ill. App. 3d at 915, 458 N.E. 2d at 915), and by stipulating at trial to the laboratory report. When the stipulation was presented to the trial court, counsel for codefendant clarified it by stating: "They're (defendant and codefendant) charged with 101 grams of delivery. That's the only thing before the court. We said we would stipulate to the chain and we stipulate to the lab with

regards to the charge." Emphasis added.

Counsel for defendant made no objection to this statement. By failing to object to this statement, counsel for defendant adopted the statement and waived the right to question the sufficiency of the proof on appeal. Holloman, 46 Ill. 2d at 318-19, 263 N.E. 2d at 11.

We also note that our review of the record and defendant's testimony convinces us that defendant intended to stipulate that the amount of cocaine delivered was in excess of 30 grams since, as noted above, defendant admitted on cross-examination that he, in fact, delivered four ounces of cocaine.

The judgment of the circuit court is affirmed. Pursuant to People v. Nicholls (1978), 71 Ill. 2d 166, 374 N.E. 2d 194, we grant the State's request and assess defendant $50 as costs for this appeal.

JUDGMENT AFFIRMED.

QUINLAN, J. with CAMPBELL and O'CONNOR, JR., JJ., concurring.

ILLINOIS SUPREME COURT
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SUPREME COURT BUILDING
SPRINGFIELD, ILL. 62704

June 1, 1989

Mr. Randolph N. Stone
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No. 68416 - People State of Illinois, repondent, v. Richard Woods, petitioner. Leave to appeal, Appellate Court, First District.

The Supreme Court today DENIED the petition for leave to appeal in the above entitled cause.

The mandate of this Court will issue to the Appellate Cour on June 23, 1989.

APPENDIX B

FILED
SEP 13 1989
JOSEPH F. SPANIOL, JR.
CLERK

NO. 89-313
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RICHARD WOODS,

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vs.

STATE OF ILLINOIS,

Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE APPELLATE COURT OF ILLINOIS FIRST DISTRICT

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BRIEF FOR RESPONDENT IN OPPOSITION

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QUESTION PRESENTED FOR REVIEW

Whether the Illinois Appellate Court properly found that petitioner's defense of entrapment was disproved beyond a reasonable doubt where the court applied relevant case law in determining that defendant was not entrapped and such a factual determination does not require review by this Court.

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RICHARD WOODS,

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ON PETITION FOR A WRIT OF CERTIORARI TO THE APPELLATE COURT OF ILLINOIS FIRST DISTRICT

OPINION BELOW

The unpublished decision of the Illinois Appellate Court was rendered on February 14, 1989. The Illinois Supreme Court denied petitioner's request for leave to appeal on June 1, 1989.

JURISDICTION

The juridictional requisites have been set forth in the Petition for a Writ of Certiorari. However, petitioner has raised only factual questions concerning the defense of entrapment and has failed to show why this Court should exercise jurisdiction and review the judgment in question by Writ of Certiorari.

STATEMENT OF THE CASE

Petitioner, Richard Woods, was charged by Information No. 83-10532 with delivery and possession of a controlled substance. He was found guilty of delivery of a controlled substance and was sentenced to six years in the Illinois Department of Corrections. The conviction and sentence were affirmed by the Illinois Appellate Court, People v. Woods, No. 87-0271, and the Illinois Supreme Court denied petitioner's request for leave to appeal.

At trial, Officer Phillip Pariso, an undercover officer for the Chicago Police Department, testified that he was contacted by a man named Jay Perch and that the two discussed a possible cocaine purchase by Officer Pariso. Perch told the officer that he could get cocaine through his cousin,

petitioner, who could handle "anything he wanted", and gave the officer petitioner's name and telephone number.

During the week and one-half prior to petitioner's arrest, Officer Pariso contacted petitioner approximately 4 times pertaining to a cocaine purchase. The men discussed a possible deal which involved the purchase of a "kilo" of cocaine. Petitioner explained that the officer would have to travel to Florida to pick up the "kilo" from petitioner's connection in that state, however, Officer Pariso declined petitioner's invitation.

On the day of petitioner's arrest, Officer Pariso telephoned petitioner who told the officer that he was able to get him six ounces of cocaine for $13,000.00. The two men met at a restaurant where petitioner told the officer that his supplier wanted $5,000

up front. The officer refused and the petitioner left, only to return approximately one hour later.

Upon petitioner's return, petitioner told Officer Pariso to drive to the location where the supplier was to bring cocaine. After waiting for awhile with no sign of the supplier, petitioner directed the officer to drive to petitioner's home.

Upon their arrival, petitioner made a phone call to an alternative connection who would supply the cocaine if the first supplier did not come through. Following the phone call, the officer returned with petitioner to the original location where the first supplier was to deliver the cocaine, but then returned to petitioner's home after the cocaine was never delivered.

On the return drive to petitioner's home, the two men stopped at a restaurant

where petitioner made yet another phone call, and then drove back to petitioner's house to await the arrival of cocaine from the alternative connection.

As Officer Pariso and petitioner waited, a car pulled up behind the officer's vehicle and a man named Lawrence Heffner exited the car, carrying a brown bag. After petitioner and Heffner went into a building for a few minutes, they went back to Officer Pariso's car and told him to drive.

During the drive, Heffner showed Officer Pariso the bag which contained four ounces of cocaine for a purchase price of $8,500. Officer Pariso parked the vehicle and told petitioner to take $8,500 from the $13,000 pre-recorded funds while the officer got out of the vehicle and walked to the rear. At that point, the officer gave a signal and the two men were immediately placed under arrest.

Following petitioner's arrest, his house was searched and various drug paraphernelia was recovered, including various sized scales, a grinder, a bottle of isotol and various water pipes. During the search, petitioner stated that he was only involved in the drug transaction for the money and that he needed the $250.00 he was to receive to pay his rent.

After his arrest, Heffner told one of the arresting officers that petitioner had told him that he had a customer who had a lot of money and wanted to buy cocaine. Heffner was expecting to earn $800.00 from the transaction with Officer Pariso.

Petitioner testified that he spoke with Jay Perch on various occasions pertaining to the sale of cocaine and that he allegedly refused Perch's request to deal in cocaine. He also claimed that Perch

introduced him to a woman named Debbie Gardner, who, together with Perch, encouraged petitioner to begin dealing in cocaine.

Petitioner further claimed that after Perch had introduced him to Officer Pariso, and petitioner had agreed to sell cocaine to the officer, Debbie Gardner threatened petitioner for not obtaining the cocaine fast enough. Additionally, petitioner alleged that while he was looking for cocaine for Officer Pariso, the officer called him fifty to sixty times. Petitioner admitted that he did not want the officer to deal directly with his "cocaine connection" because he wanted to make some money himself in order to pay his rent. Petitioner also admitted that he called one of his connections thirty to forty times in less than a month in order to arrange the sale.

Lawrence Heffner, petitioner's co-

defendant at trial, testified that petitioner asked him if he wanted to become involved in a cocaine transaction. Petitioner continued calling Heffner and Heffner agreed to make some phone calls to purchase cocaine. However, Heffner only became involved in the deal because of the many conversations he had with petitioner.

Officer Pariso testified in rebuttal that Debbie Gardner was a police informant but that she did not introduce him to the petitioner, nor did she have anything to do with petitioner's case.

Following closing arguments, the court held that the defense of entrapment did not lie and found defendant guilty of delivery of a controlled substance. Defendant was then sentenced to six years in the Illinois Department of Corrections.

REASON FOR DENYING THE PETITION FOR WRIT OF CERTIORARI

THE ILLINOIS APPELLATE COURT PROPERLY FOUND THAT PETITIONER'S DEFENSE OF ENTRAPMENT WAS DISPROVED BEYOND A REASONABLE DOUBT WHERE THE COURT APPLIED RELEVANT CASE LAW IN DETERMINING THAT DEFENDANT WAS NOT ENTRAPPED AND SUCH A FACTUAL DETERMINATION DOES NOT REQUIRE REVIEW BY THIS COURT.

REASON FOR DENYING THE WRIT

Petitioner requests this Court to issue a Writ of Certiorari to review an order by the Illinois Appellate Court which affirmed petitioner's conviction for delivery of a controlled substance. In holding that petitioner was properly found guilty beyond a reasonable doubt, the Illinois Appellate Court reviewed the record, and, after

applying relevant case law, determined that petitioner was not successful in claiming a defense of entrapment. Because petitioner merely seeks to reiterate the facts and circumstances which the Illinois Appellate Court found unpersuasive, there is no issue present which requires a decision by this Honorable Court. Therefore, the State of Illinois requests that the petition for a writ of certiorari be denied.

Petitioner has attempted to frame the issue in this case as whether the Illinois Appellate Court is properly interpreting the definition of the entrapment defense as stated in Sorrels v. U.S., 287 U.S. 435, 53 S.Ct. 210 (1932). Petitioner's attempt to place blame on the Illinois Appellate Court is in error where the Illinois Appellate Court properly applied relevant case law, including Sorrels, to the

record before it and held that defendant was properly found guilty beyond a reasonable doubt of delivery of a controlled substance.

In Sorrels, this Court stated that entrapment exists "when the criminal design originates with the officials of the government, and they implant in the mind of an innocent person the disposition to commit the alleged offense and induce its commission in order that they may prosecute." 287 U.S. at 442. In Illinois, the defense of entrapment is provided for in section 7-12 of the Criminal Code which states:

> "A person is not guilty of an offense if his conduct is incited or induced by a public officer or employee, or agent of either, for the purpose of obtaining evidence for the prosecution of such person. However, this Section

> is inapplicable if a public officer or employee, or agent of either, merely affords to such person an opportunity or facility for committing an offense in furtherance of a criminal purpose which such person has originated." Ill. Rev. Stat. 1985, ch. 38, par. 7-12.

Once a defendant presents some evidence in support of his contention that there was an entrapment, the State must prove beyond a reasonable doubt that the defendant was not entrapped. People v. Simon. 101 Ill. App. 3d 89, 95-95, 427 N.E.2d 843 (1st Dist. 1981).

The Illinois Appellate Courts have developed a three part test stemming from both the Sorrels case and the relevant Illinois Statute which the courts employ to determine whether an entrapment has occurred.

1) the idea of committing the offense must originate not with the suspect but rather with the enforcement authorities;
2) the enforcement authorities must actively encourage the suspect to commit the offense; and
3) the purpose of the encouragement must be to obtain evidence for the prosecution of the suspect.

Whether the affirmative defense of entrapment is established as a matter of law depends on whether: 1) the government initiated the crime and induced the defendant to commit it; and 2) the defendant has no predisposition to commit the offense. People v. Marshall, 101 Ill. App. 3d 244, 427 N.E.2d 1333 (4th Dist. 1981).

In the instant case, the Appellate Court employed the aforementioned test and properly found that the State was successful in rebutting petitioner's affirmative defense of entrapment. The evidence before the court proved that the idea of dealing cocaine did not originate with the State or its agent, but originated with Jay Perch and petitioner. Officer Pariso was contacted by Jay Perch who told the officer that his cousin, petitioner, could supply anything the officer wanted. Upon meeting Officer Pariso through Perch, petitioner stated that he could obtain as much as a kilogram of cocaine if that was what the officer wanted. Further, petitioner made at least 60 phone calls to various sources attempting to locate cocaine for the deal with Officer Pariso.

Obviously, the idea to deliver the cocaine to Officer Pariso did not originate

with the State or its agent, but with Jay Perch and petitioner. Petitioner's contention that he was induced and threatened by Debbie Gardner, a government informant, to sell the cocaine to Officer Pariso is meritless where Officer Pariso testified that Debbie Gardner had nothing to do with the transaction between petitioner and Officer Pariso. Similarly, petitioner's further contention that he was forced into the situation by Officer Pariso who petitioner claimed contacted him fifty or sixty times by telephone is also without merit where the officer's testimony that he contacted petitioner three or four times prior to the transaction clearly rebutted petitioner's allegation. Credibility determinations are for the trier of fact who in this case apparently belived Officer Pariso. That determination may not be reweighed either by

the Illinois Appellate Court or this Honorable Court. Jackson v. Virginia, 443 U.S. 307, 99 S.Ct. 2781 (1979). The fact that Officer Pariso merely afforded petitioner the opportunity to commit the crime (as does any undercover officer) does not defeat the fact that the idea originated with Jay Perch and petitioner.

Moreover, the inference of entraptment was further rebutted where petitioner was clearly predisposed to committing the crime. Predisposition, the principle element in the defense of entrapment, focuses upon whether the defendant was an "unwary innocent" or instead, an "unwary criminal" who readily availed himself of the opportunity to perpetrate the crime. Mathews v. United States, 485 U.S. ___, 108 S.Ct. 883, 99 L.Ed. 2d 54 (1988). In determining whether a

defendant was predisposed to commit a crime, the Illinois courts have looked at a variety of factors including whether a defendant: 1) was engaged in drug trafficking prior to the present incident; 2) easily acquiesced in the request to supply drugs; 3) had a ready source to purchase drugs; and 4) had a willingness to make a profit from the illegal act. People v. Myers, 92 Ill. App. 3d 229, 235, 415 N.E.2d 1108 (1st Dist. 1980); People v. Husted, 97 Ill. App. 3d 160, 170-171, 422 N.E.2d 962 (2nd Dist. 1981). The determination of predisposition rests upon the facts of the case and the issue as to whether defendant has been entrapped is a question for the trier of fact. People v. Katsigiannis, 171 Ill. App. 3d 1090, 1097, 526 N.E.2d 508 (2nd Dist. 1988).

On the day of the transaction, petitioner told Officer Pariso to drive to

various locations throughout the city anticipating that at least one of petitioner's "cocaine connections" would successfully supply petitioner with cocaine for Officer Pariso. After petitioner's arrest, he stated that he was only dealing for the money and was going to make $250.00 from the transaction. Further, during the search of petitioner's apartment, various drug paraphernalia was found including scales, a grinder and various solutions for manufacturing cocaine. Moreover, petitioner admitted to using and buying cocaine on previous occasions.

Clearly, petitioner was predisposed to commit the delivery and was obviously not an "unwary innocent" when he told the officer that he could obtain very large quantities of cocaine and that he had not just one, but at least two ready sources of cocaine.

Additionally, petitioner was ready, willing and able to supply Officer Pariso with cocaine and was anticipating a profit of at least a $250.00 from the deal. The fact that various drug paraphernalia were found in petitioner's apartment and his admitted prior use of the drug further supports the Appellate Court's finding that petitioner had engaged in prior drug trafficking and that he was clearly predisposed to committing the herein crime.

The Appellate Court reviewed the testimony presented at trial and affirmed the trial court's decision, finding defendant guilty of delivery of a controlled substance, following which the Illinois Supreme Court declined to review the case. Petitioner now requests this Court to reassess the credibility of the witnesses, and to reweigh the evidence presented and find in favor of

defendant. A review of the evidence is not the purpose to be served by a grant of certiorari. As Justice Holmes stated, "(w)e do not grant a certiorari to review evidence and discuss specific facts." United States v. Johnson, 268 U.S. 220, 227, 45 S.Ct. 496 (1925). Therefore, the State of Illinois respectfully requests that this Honorable Court deny the petition for a writ of certiorari.

CONCLUSION

The People of the State of Illinois respectfully request that this Honorable Court deny the Petition for Writ of Certiorari.

Respectfully submitted,

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